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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 5215

THE UNITED STATES OF AMERICA, APPELLANT

vs.

PAUL EVANS

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA**

FILED DECEMBER 26, 1948

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 823

THE UNITED STATES OF AMERICA, APPELLANT

vs.

PAUL EVANS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA

FILED DECEMBER 26, 1946

INDEX

	Original	Print
Record from D. C. U. S., Southern District of California	1	1
Names and addresses of attorneys [omitted in printing]	1	1
Indictment	8	1
Notice of motion to dismiss	9	2
Motion to dismiss	10	2
Memorandum of points and authorities	11	2
Reporter's transcript of hearing	15	4
Caption and appearances	15	4
Colloquy between Court and counsel	16	4
Argument on motion to dismiss	17	5
Ruling on motion to dismiss	25	10
Reporter's certificate [omitted in printing]	26	10
Order granting motion to dismiss	27	10
Notice of appeal	28	10
Affidavit of service	29	11
Order enlarging time within which to file record an appeal	30	12
Affidavit in support of application for extension of time	31	12
Stipulation as to record on appeal	33	13
Clerk's certificate [omitted in printing]	35	14
Statement of points to be relied upon and designation of record	36	14
Order noting probable jurisdiction	38	15

UNITED STATES VS. PAUL EVANS

1 [Names and addresses of attorneys omitted.]

8 In the District Court of the United States
in and for the Southern District of California,
Central Division

February 1946 Term

[File endorsement omitted.]

No. 18848

UNITED STATES OF AMERICA, PLAINTIFF

v.

JOE V. ROBERTS AND PAUL EVANS, DEFENDANTS

Indictment [U. S. C., Title 8, Sec. 144—Harboring aliens]

Filed Sept. 4, 1946

The grand jury charges:

On or about June 22, 1946, in Riverside County, California, within the Central Division of the Southern District of California, defendants Joe V. Roberts and Paul Evans did conceal and harbor and attempt to conceal and harbor certain alien persons, to-wit: Salvador Mesa-Solorio, Fadislaor Bravo-Cedena, Valente Solorio-Lopez, Ancelmo Hernandez-Ramirez, and Miguel Solorio-Lopez, which said alien persons then and there were aliens not duly admitted to the United States by an immigrant inspector and not lawfully entitled to enter or reside in the United States, as the defendants then and there well knew.

A true bill.

CLYDE R. BURDICK,

Foreman.

James M. Carter,
JAMES M. CARTER,
United States Attorney.
HBC:AH.

In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of motion by defendant; Paul Evans, to dismiss indictment with memorandum of points and authorities

Filed October 10, 1946

To **JAMES M. CARTER,**

United States Attorney.

Please take notice that defendant, Paul Evans, on October 11, 1946, at 10:00 o'clock in the forenoon on that date, or as soon thereafter as counsel may be heard, before Honorable Peirson M. Hall, Judge of the above-entitled court, in court room No. 3, United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, will bring on for hearing and make the attached motion.

Dated: October 9, 1946.

G. William Shea,

G. WILLIAM SHEA,

Attorney for Defendant, Paul Evans.

10 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Motion to dismiss indictment

Filed October 10, 1946

Defendant, Paul Evans, moves that the indictment herein be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute a punishable offense against the United States.
2. The court is without jurisdiction to impose any punishment against the defendant.

For the foregoing reasons, the indictment herein should be dismissed and the defendant discharged from custody.

G. William Shea,

G. WILLIAM SHEA,

Attorney for Defendant, Paul Evans.

11

Memorandum of points and authorities

Since Title 8, Sec. 144 U. S. C. A. prescribes no punishment for the concealment and harboring of aliens, the indictment herein fails to state any punishable offense. It is submitted that this question may be properly raised by this motion.

RULE 11, (B) (1) OF THE RULES OF CRIMINAL PROCEDURE.

Title 8, Sec. 144 U. S. C. A. provides as follows:

"Any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, or shall conceal or harbor or attempt to conceal or harbor, or assist or abet another to conceal or harbor, in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$2,000 and by imprisonment for a term not exceeding five years for each and every alien *so landed or brought in or attempted to be landed or brought in.*" [Italics ours.]

It will be seen from the foregoing that no provision has been made for punishing a person who is charged only with concealing or harboring an alien unlawfully in the United States, and an indictment which fails to charge a defendant with having unlawfully "landed, brought in or attempted to be landed or brought in" fails to state a punishable offense. Any construction of Sec. 144 in a ruling upon this motion must necessarily give recognition to that elementary principle of criminal law that "statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used."

U. S. v. Resnick, 299 U. S. 207, 57 Supreme Court Rep. 126, 127. (1936).

12 The case of United States v. Kinzo Ichiki, 43 F. (2d) 1007, (1930) directly supports the objection raised by the motion herein made. This court in that case held that it had no jurisdiction to impose any punishment upon the defendant therein who was indicted under an indictment exactly the same as the one involved in these proceedings. In construing Section 144, District Judge Jacobs in that case stated as follows:

"This may have been an oversight on the part of Congress, but the fact remains that by inserting this language in the statute, they have limited the penalty to bringing in or landing an alien in the United States." 43 F. (2d), 1008.

This court also recognized the same limitations as to the punishment prescribed in Section 144 in the case of United States v. Niroku Komai, 286 F. 450, 451, (1923).

Counsel acknowledges that the case of Medeiros v. Keville, 63 F. (2d), 187 (C. C. A. First Circuit), (1933) is opposed to the conclusions reached in this court in the two cases cited above. It is

submitted, however, that the decision in *Medeiros v. Keville* is inconsistent with that basic principle of criminal law so cogently stated by the Supreme Court in the case of *United States v. Resnick*, *Supra*. Pending a clarification by the Supreme Court itself or Section 144, it is submitted that this court should follow its previous decisions and grant the motion herein made to dismiss the indictment.

Respectfully submitted,

G. William Shea,

G. WILLIAM SHEA,

Attorney for Defendant, *Paul Evans*.

13 Service of the within Motion and Memorandum of Points and Authorities and receipt of a copy is hereby admitted this 9th day of October 1946. Notice required by Rule 45 (d) of Federal Rules of Criminal Procedure is hereby waived and consent is hereby given to the hearing of the within motion on the date fixed therein.

WILLIAM STRONG,

Attorney for U. S. A.

14 [File endorsement omitted.]

15 In the District Court of the United States in and for the Southern District of California, Central Division

Honorable PEIRSON M. HALL, Judge Presiding

No. 18848 Criminal.

UNITED STATES OF AMERICA, PLAINTIFF

v.

JOE V. ROBERTS AND PAUL EVANS, DEFENDANTS

Reporter's transcript of hearing

Filed December 20, 1946.

LOS ANGELES, CALIFORNIA, October 10, 1946.

Appearances: for the Plaintiff: JAMES M. CARTER, United States Attorney; by WILLIAM STRONG, Assistant United States Attorney. For the Defendant Roberts: GUY F. BUSH, Esq., for the Defendant EVANS: G. WILLIAM SHEA, Esq.

16 LOS ANGELES, CALIFORNIA; OCTOBER 10, 1946; 10:00 O'CLOCK
A. M.

Colloquy

The COURT. Mr. Kinnison, on this Roberts and Evans matter, the Clerk tells me that Mr. Strong is handling that.

Mr. KINNISON. Yes; because I am tied up on Fridays getting ready for the Monday session. Mr. Strong will take that over.

The COURT. We sent for Mr. Strong to see whether or not it will be ready to proceed tomorrow for trial.

Mr. KINNISON. I believe it will because I was ready to proceed on Tuesday. There has been a motion filed by Mr. Shea to dismiss the indictment on the ground that there is no penalty involved in that particular code section. It is a matter that has been raised by defendants many times in this court and I think it has been decided by all the other judges.

The COURT. We will wait for Mr. Strong and see what he has to say.

(Short recess.)

The COURT. Mr. Strong, in the Roberts and Evans matter set for tomorrow, I have a jury here and the case for trial today has been disposed of my plea. Do you have any notion whether or not there will or will not be a waiver of jury filed? I do not want to bring the jury back tomorrow if there is going to be a change of pleas or a waiver.

17. Mr. STRONG. No; I don't think there is going to be a change of plea, your Honor, because they have filed a motion to be brought on tomorrow to dismiss the indictment.

The COURT. The Clerk just telephoned Mr. Shea to find out from him and he said he will get in a taxicab and come right over and argue the motion now.

Mr. STRONG. All right. I am ready.

(Short recess.)

Argument on motion to dismiss

The COURT. Mr. Shea, you have a motion here?

Mr. SHEA. I intended to bring that up tomorrow which was the day set.

The COURT. We have a jury present heretoday, the trial of which was set for this morning and it eventuated in a plea so the jury was not needed. I have this case on tomorrow and I do not know whether to order the jury back tomorrow or not.

Mr. SHEA. I hope that my motion may persuade your Honor that a jury will not be needed even in this case.

The COURT. Very well. We will go ahead and argue the motion now. If I grant it they will not have to come back; if I do, they will have to.

The COURT. I think the jury had probably better be excused.

Mr. SHEA. I would imagine so.

The COURT. Very well, Mr. Shea.

18 Mr. SHEA. I concede that the motion is admittedly a technical one but my limited experience in criminal cases taught me that even technical motions must be made where the punishment—

The COURT. It is your duty to raise it. You need not apologize for raising any point of law at all.

Mr. SHEA. My argument can be very simple, your Honor, and that is, that Section 144 of Title 8, although it does define as a crime what the indictment charges, namely, concealing and harboring aliens unlawfully present in this country, when it gets down to prescribing the punishment—

The COURT. Excuse me.

Mr. Bailiff, will you get me 43 F. (2d) and 286 F.

Mr. STRONG. Also your Honor might look at 112 F. (2d).

The COURT. I see your point that is made by the motion. Your point is that while it proscribes the harboring or concealing of an alien it nevertheless provides for punishment only for each and every alien so landed or brought in or attempted to be landed or brought in. And Judge Jacobs in *United States v. Kinzo Ichiki* (43 F. (2d) 1007)—I don't know whether it is a Circuit Court case or a District Court case—

Mr. SHEA. That was a District Court case.

The COURT. Southern District of California?

19 Mr. SHEA. Yes. Both of those first cited cases arose in this court.

The COURT. And *Medeiros v. Keville* (63 F. (2d) 187) is a First Circuit Court case?

Mr. SHEA. Yes; a First Circuit Court case, and admittedly in opposition to the rulings of the two Southern District cases.

The COURT. And you maintain that the case in 112 F. (2d)—what circuit is that?

Mr. STRONG. That is the Second Circuit. I think it also has something to do with this case.

Our position is that this is an old statute and has been on the books for some time and I think in this district already right now there are four or five cases which have been decided on this same statute charging the same violation, with a penalty assessed.

The COURT. Has the same point been raised in each one?

Mr. STRONG. I mean, it has been raised in a few of them. It has been raised in the case that I am now handling on appeal, where it was raised in the District Court, which was overruled and is now being raised again on appeal for the same reason that apparently the drafters of the statute did not put in enough words in it, although they did intend to make criminal the harboring and concealment of aliens.

The Court. What is the 112 F. (2d) citation? United States v. Mack!

20. Mr. STRONG. Yes; your Honor.

The Court. That is a conspiracy case.

Mr. SHEA. That is the point I want to make. I am not familiar with the other cases, but I have read other cases too, and as a matter of fact in the Niroku Komai case, 286 F. 450; that I cite, the Court goes into considerable pains to point out there that the indictment was founded on a conspiracy, which of course is laid under a different statute entirely.

The Court. This case of United States v. Mack that was founded on a conspiracy not only to harboring and concealing aliens but to support and keep aliens as prostitutes without registering them, concerning which there is a specific and separate statute, and the conspiracy also was to transport prostitutes in foreign commerce. So it was not a substantive offense of merely concealing and harboring an alien.

Mr. STRONG. Of course your Honor knows you can't have a conspiracy to violate a statute which doesn't state an offense.

Mr. SHEA. I am not arguing that it doesn't state an offense.

Mr. STRONG. And if the substantive statute which is conspired to violate does not state an offense then you have no conspiracy. Consequently, in order to have a conspiracy you must first have a statute which states an offense.

21. The Court. I know, but there is a statute that states an offense to keep and support aliens as prostitutes and to transport prostitutes in foreign commerce.

Mr. STRONG. May I say this, your Honor, that in view of the fact that if a defect exists anywhere it is a defect in the statute rather than a pleading, and in view of the fact that this same section and the same charge of concealing and harboring aliens has come up before, that I think that that is a matter really which the Circuit Court and the Supreme Court will have eventually to decide directly, and that consequently since the statute is drawn as it is and since the indictment does state an offense under the statute as drawn, I respectfully submit that the motion to dismiss the indictment should be denied, because it cannot obviously be resolved except by the highest courts eventually because it is a construction question, and there are cases already pending which have involved this very same point and the objection raised was on exactly the same ground.

The deficiency in the statute of course is evident right on its face. We have nothing to say about that. It is there.

The Court. If the deficiency is in the statute then there is no offense.

22 Mr. STRONG. Except we believe that the statute does state an offense because it prohibits the acts which it is charged the defendants did in this case, regardless of the fact that the subsequent language may not specifically prescribe a punishment.

The COURT. How can you prosecute anybody if there is no punishment?

Mr. STRONG. It isn't set forth in so many words, but it is the Government's contention in this case, as well as it has been in others involving the same section, that the punishment which is prescribed in the latter part of the statute for each of the violations which are prohibited in the former part of the statute, even though they are not specifically enumerated, as to the harboring and concealing in the latter part, it is made an offense to conceal and harbor. That is the thing that is prohibited.

Mr. SHEA. May I merely join in the thought that I too agree that it is something for the Supreme Court to clarify, but until we get that clarification then I think the Government here should be treated just as it was treated in the decision by Judge Jacobs in the Kimzo Ichiki case.

Mr. STRONG. I submit that the Government should be treated as it was treated in this district more recently in other cases involving this same matter.

The COURT. I have had a number of these cases, but the point has never been raised before.

23 Mr. STRONG. I realize that. I think that probably as a practical solution the case should be permitted to go to trial because if the defect is as substantial as it might appear from counsel's argument, then of course there will be a reversal on that one point of law. It would have nothing to do with the facts in the case.

Mr. SHEA. That is the reason for raising it by this motion now, that it does not need a trial to be disposed of.

I would like to call particularly your Honor's attention—in my haste to get this out I didn't give the fullest quotations of Judge Jacobs' opinion—

The COURT. I have just read the whole opinion.

Mr. STRONG. May I say something further, your Honor?

I think that it is a sound fundamental statutory construction basis of examining that statute should lead to the conclusion that Congress didn't intend to do a vain act as it would appear to have done here in connection with the concealment and harboring of aliens. They specifically prohibit the concealment and the harboring and the attempt to do either, and I think that what happened was that there is a failure, possibly through a typographical error

of the printers, or maybe the committees, as your Honor well knows, very often in drafting and redrafting statutes manage to leave out words and put in words that confuse their prior definite statements in the same statute. I think that in this case what happened was that they did intend to have a punishment, because they do specifically prohibit this type of action which is charged 24 here.

The COURT. It is like other statutes on the Federal books that come to my mind. There is a statute which says that no person who has been in the employ of the Government of the United States shall, within a period of two years thereafter, take any case against the Government of the United States or any department of it. Well, it has been violated repeatedly ever since it was passed. But there is no penalty provided, and I recall that I had occasion to take the matter up with the Attorney General's office when I was the United States Attorney, and the conclusion was that the prohibition is there but there is no penalty provided, and that is how it is done.

Mr. STRONG. I might state, your Honor, that I think in this case it was the intention of Congress to provide a penalty.

The COURT. That might have been true but I do not think they provided it. I think I am bound by both Judge Trippet's opinion, for whom I have the highest respect, as well as Judge Jacobs in this district. And it will settle the matter a great deal more quickly if I now sustain the motion to dismiss and enable you to take a direct appeal to the Circuit Court of Appeals on this indictment.

Mr. STRONG. Would your Honor consider withholding the motion? I may get some additional authority.

25 The COURT. I think this is enough. The motion to dismiss is granted on the ground that the statute does not provide a penalty for harboring and concealing, which is the only thing charged in the indictment. There is nothing charged in the indictment that the defendant landed or brought in or attempted to land or to bring in any alien whatsoever.

Therefore, the motion to dismiss is granted.

Mr. SHEA. Will your Honor also direct that the defendant be released from custody?

The COURT. Yes.

What are you going to do with the other defendant who has pleaded guilty?

Mr. STRONG. If he pleads guilty and it doesn't state an offense he hasn't done anything.

The COURT. If he has pleaded guilty I suppose the other side can make a motion in arrest of judgment.

Mr. STRONG. I think that would have to be done by them.

Mr. SHEA. That is the way the first case came up.

Ruling on motion to dismiss.

The COURT. Very well. The motion to dismiss is granted on the ground stated and the defendant is ordered and directed to be released. The Clerk will prepare the release.

Mr. SHEA. Thank you, your Honor.

26 [Reporter's Certificate to foregoing transcript omitted in printing.]

27 In United States District Court

Present:

The Honorable PEIRSON M. HALL, District Judge

No. 18,848-Crim.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

PAUL EVANS, DEFENDANT

Order granting motion to dismiss

October 10, 1946

This cause coming on for hearing on motion of defendant Paul Evans to dismiss indictment, pursuant to notice filed October 10, 1946; Wm. Strong, Esq., Asst. U. S. Attorney, appearing for the Government; G. Wm. Shea, Esq., appearing for the defendant:

Attorney Shea argues in support of motion to dismiss. Attorney Strong argues in opposition.

The motion to dismiss is ordered granted on the grounds that the statute does not provide a penalty for harboring and concealing, which is the only thing charged in the indictment. There is nothing in the indictment charging that the defendant brought in or attempted to bring in an alien whatsoever. The defendant is ordered released from custody.

28 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of Appeal

Filed November 8, 1946

The United States hereby appeals to the Supreme Court of the United States from the judgment of this Court, entered October

10, 1946, dismissing the indictment in the above-entitled case on the ground that the statute on which the indictment is based, to-wit, Section 8 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 880, 8 U. S. C. 144, does not provide a penalty for harboring and concealing aliens not duly admitted to and not entitled to enter or reside in the United States.

George T. Washington,
GEORGE T. WASHINGTON,
Acting Solicitor General.

James M. Carter,
JAMES M. CARTER,

*United States Attorney for the
Southern District of California,*

Attorneys for Appellant.

29 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Affidavit of Service by Mail

Filed November 8, 1946

STATE OF CALIFORNIA.

County of Los Angeles, ss:

Beulah V. Baxter, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (his) (her) business address is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on November 8, 1946 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of notice of appeal, statement as to jurisdiction, copy of minute order in the above-entitled cause, addressed to G. Wm. Shea, 704 Roosevelt Bldg., 727 W. 7th St., Los Angeles 14, Calif., his last known address, at which place there is a delivery service by United States Mails from said post office.

BEULAH V. BAXTER.

Subscribed and sworn to before me, this 8th day of November 1946.

GEORGE W. BRYAN,
Notary Public.

30. In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order enlarging time within which to file record on appeal

Filed Dec. 14, 1946

Upon reading and filing the attached affidavit of William Strong, Special Assistant to the United States Attorney, and for good cause shown, the time within which plaintiff in this case may file and docket the record on appeal is hereby extended to and including January 18, 1947.

PEIRSON M. HALL,
District Court Judge.

Dated 12/14/46, Los Angeles, California.

31. In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Affidavit in support of application for extension of time within which to file record on appeal

Filed Dec. 14, 1946

STATE OF CALIFORNIA,

County of Los Angeles, ss:

William Strong, Special Assistant to the United States Attorney for the Southern District of California, being first duly sworn, upon oath deposes and says:

That Notice of Appeal to the Supreme Court of the United States was filed in this case on November 8, 1946;

That various transactions in connection with the filing of the Notice of Appeal, and other necessary papers were handled on behalf of the United States Attorney during an absence from duty by your affiant;

That until a few days ago your affiant was under the impression that all the necessary steps had been taken to perfect the appeal in this case to the Supreme Court of the United States;

32. That your affiant has now become apprised of the fact that the Record on Appeal has not as yet been prepared,

and, consequently, cannot be docketed within the period allotted by the Rules of Criminal Procedure;

That in order to prepare and docket the Record on Appeal in this case, your affiant will require an additional thirty (30) days;

Wherefore, your affiant respectfully prays that the time within which the Record on Appeal, as required under the Rules of Criminal Procedure, shall be extended to and including January 18, 1947.

WILLIAM STRONG,

Special Assistant to the U. S. Attorney.

Subscribed and sworn to before me this 13th day of December 1946.

[SEAL]

EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California;
By Wm. A. White,

Deputy.

WS/BVB.

33 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Stipulation as to record on appeal

Filed December 20, 1946

It is hereby stipulated, by and between counsel for the parties in the above-entitled action, that the Clerk of the United States District Court for the Southern District of California make a Transcript of Record to be filed in the Supreme Court of the United States, pursuant to appeal in the above-entitled cause, and that the said Transcript of Record include the following documents:

1. Indictment;
2. Notice of Motion by defendant Evans to dismiss the Indictment, etc.;
3. Motion to Dismiss;
4. Judgment dismissing Indictment;
5. Notice of Appeal;

34. 6. Jurisdictional Statement;

7. This Stipulation.

8. Transcript of Record dated October 10, 1946.

Dated December 12, 1946.

JAMES M. CARTER,

United States Attorney,

ERNÉST A. TOLIN,

Chief Assistant U. S. Attorney,

ARTHUR LIVINGSTON,

Assistant U. S. Attorney, Chief of Criminal Division,

WILLIAM STRONG,

Special Assistant to the U. S. Attorney,

William Strong,

By WILLIAM STRONG,

Special Assistant to the U. S. Attorney,

Attorneys for Plaintiff and Appellant.

G. William Shea,

By G. WILLIAM SHEA,

Attorney for Defendant and Appellee.

WS/BVB.

35. In the District Court of the United States, Southern
District of California, Central Division

[Clerk's Certificate to foregoing transcript omitted in printing.]

36. In the Supreme Court of the United States

October Term, 1946

No. 823

Statement of points to be relied upon and designation of record

Filed January 7, 1947

Pursuant to Rule 13, paragraph 9, of this Court, appellant
states that it intends to rely upon the following points:1. The district court erred in holding that Section 8 of the
Immigration Act of February 5, 1917, does not provide a penalty
for harboring and concealing aliens not duly admitted by an immi-
grant inspector or not lawfully entitled to enter or reside within
the United States.2. The district court erred in holding that the indictment did
not state a punishable federal offense.

3. The district court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

George T. Washington.

GEORGE T. WASHINGTON,
V. B.

Acting Solicitor General.

37 I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Record on G. William Shea, Esquire, 704 Roosevelt Building, 727 West 7th Street, Los Angeles (14), California, Attorney for Appellee, by mailing a copy to him at his business address.

GEORGE T. WASHINGTON,
V. B.

Acting Solicitor General.

Dated at Washington, D. C., this 7th day of January, 1947.

[File endorsement omitted.]

38

Supreme Court of the United States

No. 823, October Term, 1946

Order noting probable jurisdiction

January 20, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket.

[Endorsement on cover:] File No. 51,687. Southern California, D. C. U. S. Term No. 823. The United States of America, Appellant, vs. Paul Evans. Filed December 26, 1946. Term No. 823 O. T. 1946.